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17th Annual Report

California Board of
Legal Specialization

State Bar of California
2004

SEVENTEENTH ANNUAL REPORT OF THE CALIFORNIA BOARD OF LEGAL SPECIALIZATION

This report covers the period from 1/1/03 through 12/31/03

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BACKGROUND

THE PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

The Legal Specialization program is a Supreme Court approved method of certifying attorneys as specialists in particular areas of law, and operates pursuant to the following regulatory structure:

- Rule 983.5, adopted by the Supreme Court, which contains a provision authorizing the State Bar to adopt rules to establish and administer a program to certify legal specialists;
- Rules Governing the State Bar of California Program for Certifying Legal Specialists ("Rules"), adopted by the Board of Governors, which contain the details for operation of the program; and
- Standards for Certification and Recertification in each specialty area, adopted by the Board of Governors.

The requirements to become a certified specialist are as follows:

- passage of a written examination in the specialty area
- participation in continuing education activities in the specialty area
- demonstration of experience in the specialty area based on performance of a variety of activities related to that area
- favorable evaluation by other attorneys and judges familiar with the attorney's work in the specialty area

Certification is valid for a five-year period, during which time specialists must continue to meet task and education requirements similar to those for certification in order to qualify for recertification.

Costs of the program are entirely defrayed by annual fees, as well as certification, recertification, education provider, and accreditation fees. The Rules mandate that specialization be self-supporting.

HISTORY

The program was established to:

- give consumers another tool to use in selecting an attorney. Formal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading to the public. The program authorizes attorneys who satisfy specific criteria to

hold themselves out as “certified specialists.” The public may rely on the fact that certified specialists have had to demonstrate their proficiency in their practice area.

- "level the playing field" by allowing attorneys who are not in large firms to demonstrate their proficiency to the public. The program gives sole practitioners, attorneys in small firms, attorneys in small towns, women and minorities a way of gaining recognition for their knowledge, work and skills, and advertising their proficiency in a particular area of law to the public.
- encourage attorney competence through the development of continuing legal education (CLE) programs. Specialists have been required to take CLE in their areas of practice long before the inception of the MCLE requirement for all bar members. Even now, the CLE requirement for specialists is almost double that of the general bar.

TIMELINE

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| 1970 | California became the first state to establish a system for "certifying" legal specialists. Based on a proposal by the Committee on Legal Specialization, the State Bar Board of Governors adopted a "Pilot Program" to develop through experience the most feasible and useful certification program. |
| 1972 | The "Pilot Program," which certified specialists in Criminal Law, Taxation Law, and Workers' Compensation Law, was approved by the California Supreme Court. |
| 1973 | The first examinations in Criminal Law, Taxation Law and Workers' Compensation Law were offered. |
| 1979 | Family Law was added to the Pilot Program. |
| 1984 | The Board of Governors voted to recommend that the Supreme Court make the State Bar of California Program for Certifying Legal Specialists ("Program") permanent. |
| 1985 | The California Supreme Court approved the Program. |
| 1986 | Immigration and Nationality Law was added to the Program. |
| 1988 | Estate Planning, Trust and Probate Law was added to the Program. |
| 1993 | Personal and Small Business Bankruptcy Law was added to the Program. |

- 1994 Based upon a proposal by the California Board of Legal Specialization ("CBLS") to streamline and standardize what had become an overly complex certification process, the Board of Governors requested the California Supreme Court to repeal the Program and adopt new rule of court 983.5 [Certifying Legal Specialists], an enabling rule containing a provision authorizing the State Bar to adopt rules to establish and administer a program for certifying legal specialists.

The Board also approved new program rules and revised standards for certification and recertification in each specialty area.

- 1995 The Supreme Court repealed the Program and adopted rule 983.5.

Appellate Law was added to the Program.

- 1996 Rule 983.5 and the new program rules and revised standards went into effect on January 1.

- 1997 The program rules and standards were revised again effective June 1. The changes were the result of an ongoing effort to make application and certification processes efficient and cost-effective. For the most part, the changes were "housekeeping" amendments aimed at providing answers to the most frequently asked questions about the program, incorporating past administrative practices, and making other changes based upon the State Bar's experience operating the program.

New Rule of Professional Conduct 1-400(D)(6), approved by the Supreme Court on November 25, 1996, also became effective on June 1. The rule prohibits a member from advertising as a "certified specialist" unless the member is certified either by the California Board of Legal Specialization or another entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors (the accreditation standards became effective on June 1 as well). The rule also requires the member to state the complete name of the entity that granted certification.

The National Board of Trial Advocacy's certification programs in civil and criminal trial advocacy were accredited by the State Bar.

- 1998 The American Board of Certification's programs in business bankruptcy law, consumer bankruptcy law, and creditors' rights law and the National Elder Law Foundation's certification program in elder law were accredited by the State Bar.

- 1999 The National Board of Trial Advocacy's certification program in family law trial advocacy was accredited by the State Bar.

- 2002 The American Board of Professional Liability Attorneys' certification programs in accounting, legal and medical malpractice were accredited by the State Bar.

- 2003 The program rules and standards were revised effective January 1. There were two significant changes to the rules: (1) an increase from three to five in the number of years during which the percentage of practice requirement applies; and (2) the addition of criteria relating to discipline and professional negligence that may be used in evaluating an applicant's proficiency and ethics, and the imposition on the applicant of a duty to disclose such criteria within a given time frame.

NUMBER OF CERTIFIED SPECIALISTS

As of December 31, 2003, the following were the number of certified specialists:

Specialty Field	
Appellate Law	212
Bankruptcy Law (<i>Personal & Small Business</i>)	99
Criminal Law	357
Estate Planning, Trust & Probate Law	762
Family Law	1041
Immigration & Nationality Law	138
Taxation Law	426
Workers' Compensation Law	861
TOTAL	3896

THE VOLUNTEER EFFORT

From the development of the initial proposal to create a new specialty area to the administration of existing specialty areas, the program is led by volunteers assisted by the Office of Certification. During 2003, nine separate committees made up of volunteers administered the program: the CBLS and the Advisory Commissions for each of the eight specialty areas.

The CBLS and each of the Advisory Commissions meet at least six times a year in Northern and Southern California locales. Members are appointed to three-year terms. In addition, consulting groups are appointed on an ad hoc basis to develop and make recommendations as to certification standards for new specialty areas.

CBLS

The CBLS, which is appointed by the Board of Governors, is charged with overall administration of the program, recommends new specialty areas and modifications to existing specialty areas to the Board of Governors, and acts upon the recommendations of the Advisory Commissions for approval or denial of certifications and recertifications. It is composed of 11 members, at least three of whom must be public members, and one advisor (traditionally the previous year's chair). In addition, six of the eight Advisory Commission chairs sit on the CBLS as voting members on a rotating basis.

For the 2003-2004 committee year beginning September 12, 2003, John W. Munsill, Gold River, is serving as Chair, Alice J. MacAllister, San Jose, as Vice-Chair, and Irwin D. Goldring, Encino, as Advisor.

Advisory Commissions

The Advisory Commissions, also appointed by the Board of Governors, devise the specialty examinations, review certification and recertification applications, and act on applications for approved education provider status or approval of individual education activities. Each of the eight Advisory Commissions is composed of nine members, at least one of which is a public member.

Council of Past Chairs

At its November 1996 meeting, the Board of Governors created and appointed a Council of Past Chairs of the Board of Legal Specialization to advise and consult with the CBLS on an ad hoc basis. The Council consists of no more than the last five chairs of the CBLS who are willing and able to serve.

ADR Consulting Group

A consulting group was appointed by the State Bar Board of Governors in July 2003 to determine the feasibility of, and create standards for, certification in the area of alternative dispute resolution (ADR). The group held its first meeting in October 2003 and is expected to make its recommendation to the CBLS in March 2004.

The CBLS chose ADR as a possible new area for certification because of the perceived demand for skilled practitioners in ADR from both the consuming public and the judiciary. Personal and public budgetary constraints (if not crises) are leading legal consumers to hire, and the courts to solicit as volunteers, attorneys who will serve as arbitrators, private judges, and mediators in an attempt to relieve the congested and financially exhausted court system. The CBLS believes that the State Bar's membership, the courts, and the public deserve State Bar oversight of attorneys who choose to specialize in this field.

(See Appendix A for CBLS, Advisory Commission, Council of Past Chairs, and ADR Consulting Group rosters.)

The office of the CBLS is located at The State Bar of California, 180 Howard Street, San Francisco, CA 94105.

THE STAFF

The Office of Certification handles ten certification programs, including Legal Specialization. The day-to-day operations of the program include processing applications for certification, recertification and approved provider/individual education activity approval; answering inquiries about the program from the public and members of the bar; staffing the CBLS, Advisory Commissions and consulting groups; maintaining the Legal Specialization website; developing and monitoring the budget; assisting in the development and administration of the legal specialist exams; and maintaining and distributing lists of certified specialists and approved education providers and programs.

BUDGET/FISCAL MATTERS

Section 20.8 of the Rules mandates that the program be self-supporting. It is completely funded by fees collected from applicants, certified specialists, education providers, and accredited organizations. The program draws no monies from the State Bar's general fund and, in fact, pays into the general fund for infrastructure costs such as space, equipment, and computer services. The program is budgeted on a fiscal year basis.

ACTIVITIES OF THE PROGRAM

CONTINUING LEGAL EDUCATION

One of the most important functions of each of the Advisory Commissions is to supervise the quality of proposed continuing legal education programs that may be attended by those individuals seeking education units needed to meet the requirements of certification or recertification. Applicants for certification are required to complete 45 hours of approved education activities during the three years immediately preceding application. Applicants for recertification are required to complete 60 hours of education during their current certification term.

Under the Rules that became effective January 1, 1996, the Advisory Commissions are authorized to approve providers of education programs for a period of up to two years. To qualify as an approved provider, the provider must demonstrate that, in the two years immediately preceding application, it put on at least four education programs that complied with the requirements for education program content. Like MCLE, approved Legal Specialization provider status allows providers to offer an unlimited number of programs for legal specialization credit without having to submit each one for approval.

The following statistics reflect the number of approved legal specialization providers as of December 31, 2003, and the number of applications for approval of individual CLE programs received during the period of January 1, 2003, through December 31, 2003:

Advisory Commission	# of Approved Providers	# of Applications for Individual Programs
Appellate Law	13	10
Bankruptcy Law (<i>Personal & Small Business</i>)	1	3
Criminal Law	8	3
Estate Planning, Trust & Probate Law	12	24
Family Law	19	31
Immigration & Nationality Law	2	1
Taxation Law	11	14
Workers' Compensation Law	15	30
TOTAL	81	116

EXAMINATIONS

Examinations take place in alternate years. On August 17, 2003, examinations in all specialty areas were given to 547 examinees in San Francisco and Los Angeles. There were 389 successful examinees, for a pass rate of 71%.

ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS ("CERTIFYING CERTIFIERS")

Rule of Professional Conduct 1-400(D)(6) prohibits a member from advertising as a "certified specialist" unless the member is certified by the California Board of Legal Specialization, or another entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors. The following certification programs have been accredited by the State Bar pursuant to the Rules Governing Accreditation of Specialty Certification Programs for Attorneys:

Certifying Organization	Certification Programs	# of CA Attorneys Certified
American Board of Certification	business bankruptcy law consumer bankruptcy law creditors' rights law	33 9 8
American Board of Professional Liability Attorneys	accounting malpractice legal malpractice medical malpractice	0 5 13
National Board of Trial Advocacy	civil trial advocacy criminal trial advocacy family law trial advocacy	119 7 2
National Elder Law Foundation	elder law	30

INTERNET

The CBLS maintains a website at www.californiaspecialist.org where visitors can search for a certified specialist by area of law and county. Attorneys interested in becoming certified can use the site to find information on the process, including the latest exam information and registration form, the program's rules and regulations, and the standards for certification. Also found on the site are a list of approved legal specialist education providers, the *Legal Specialization Digest*, and an order form for consumer brochures. In 2003, certified specialists were given online access to applications for recertification and the CBLS logo for use in advertising.

PUBLIC AWARENESS

The program continued its established public awareness activities:

- ◆ Photo ads in the *California Bar Journal*
- ◆ Continued funding of Chuck Finney's National Public Radio program, "Your Legal Rights," a weekly call-in format that features a certified specialist once a month
- ◆ Annual publication of the list of certified specialists in the *Parker Directory*
- ◆ Biannual publication of the *Legal Specialization Digest*
- ◆ Publication of consumer pamphlets in English and Spanish for each specialty area
- ◆ Maintenance of the program website at www.californiaspecialist.org
- ◆ Annual reception recognizing specialists who have been certified for 20 years or more
- ◆ Information booths at the State Bar Annual Meeting and professional and educational conferences

In addition, the process of registering the CBLS logo as a certification mark with the U.S. Patent and Trademark Office continues. Under California Rule of Professional Conduct 1-400(D)(6), attorneys who hold themselves out as certified specialists must identify the certifying body. Certified specialists will be able to use the logo in their advertising instead of, or in addition to, spelling out "The State Bar of California Board of Legal Specialization." Use of the logo is intended to present a consistent, identifiable image for specialization apart from regular Bar membership in order to promote recognition of specialist certification among attorneys and the consumers of legal services.

TWENTY-YEAR RECOGNITION PROGRAM

The Board of Legal Specialization has established a recognition program for certified specialists who have been continuously certified by the CBLS in a particular specialty area for at least twenty years. Attorneys certified in the areas of criminal law, family law, taxation law and workers' compensation law were honored at a reception on September 9, 2003, during the State Bar's Annual Meeting in Anaheim. The reception was presided over by then CBLS chair, Irwin D. Goldring, who presented certificates of appreciation to the attorneys who were able to attend in person. Those unable to attend received their certificates by mail.

This was the first year that the program honored 30-year certified specialists. Those reaching the 30-year mark included 25 certified criminal law specialists, 73 certified taxation law specialists, and 36 certified workers' compensation law specialists. Twenty-year honorees included 7 certified criminal law specialists, 43 certified family law specialists, 26 certified taxation law specialists, and 39 certified workers' compensation law specialists.

PROPOSED CHANGES TO THE PROGRAM RULES AND STANDARDS

The CBLS, its Advisory Commissions, and Office of Certification staff regularly review the Rules with an eye toward incorporating administrative practices that have evolved over time, streamlining the certification process to make the program as efficient and cost-effective as possible, and making other necessary changes based on the experience of the CBLS and Office of Certification staff in administering the program. The standards for certification and recertification are also reviewed to insure that the requirements reflect current practice and terminology in each specialty area.

In December 2003, the State Bar Board Committee on Member Oversight authorized publication of proposed changes to the Rules and standards for a 90-day public comment period. The proposed changes to the Rules are intended to enhance the ease of administration of the Legal Specialization program by (1) allowing suspension and revocation of certification based on non-disciplinary regulatory actions; (2) giving voting rights on the CBLS to all Advisory Commission chairs (at present, only six of the eight chairs vote on a rotating basis); and (3) allowing release of confidential information on an applicant's file to the Office of Chief Trial Counsel, which represents the CBLS when an applicant appeals the denial of his or her certification or recertification, without first having to request approval from the Board of Governors.

The proposed changes to the Personal and Small Business Bankruptcy Law Standards came at the request of the Advisory Commission for that specialty, which recommends adding representation of corporate or partnership debtors under chapter 11 of the Bankruptcy Code and changing the name of the specialty to Bankruptcy Law. The specialty was established in 1993 with a focus on personal and small business (chapter 7) bankruptcy. During that ten years, it has become evident that the name is not user-friendly to consumers trying to find a bankruptcy specialist. It also erroneously suggests that certified personal and small business bankruptcy specialists are not capable of handling other than small business matters and, as a result, discourages bankruptcy specialists who handle chapter 11 matters from seeking certification.

The proposed changes to the Appellate Law Standards are intended to clarify changes to the education requirement that were approved by the Board of Governors in July 2002, effective 1/1/03.

IDENTIFICATION OF PROBLEM AREAS AND RECOMMENDATIONS

Section 21.0 of the Rules requires that the CBLS annual report identify problem areas and recommend appropriate solutions. During this reporting period of January 1, 2003 to December 31, 2003, the CBLS has identified the following continuing areas of concern.

PROGRAM GROWTH

While the CBLS will continue to explore ways to increase recruitment of applicants for existing specialty areas, the surest way for the program to grow is to add new specialties. A consulting group is currently looking at certification in alternative dispute resolution, and the CBLS is considering whether to recommend creation of a consulting group for personal injury law. The CBLS may also recommend revisiting real estate law in light of increasing interest in certification expressed by practitioners in that specialty area. Before making such recommendations, the CBLS will work to identify and coordinate with all parties who may be interested in and/or affected by certification in such areas.

EDUCATION OUTREACH

In an effort to increase the number of specialist-level CLE activities available to certified specialists and applicants for certification, the CBLS is working with its Advisory Commissions to develop learning objectives for each area of law that can be distributed to education providers to help them develop courses for specialists. It will also encourage providers to develop courses that will help attorneys prepare for the legal specialist exam and provide exam information to their course participants.